

CRIMINAL REVISION NO.750 OF 2006

DATE OF DECISION: SEPTEMBER 19, 2007

Ashok Kumar and others

.....Petitioners

VERSUS

State of Haryana and another

....Respondents

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. J. S. Bedi, Advocate,
for the petitioners.

Mr. S. K. Hooda, Sr.DAG, Haryana,
for the State.

Mr. R. K. Dahiya, Advocate,
for respondent No.2.

RANJIT SINGH J.

On being charged for offences under Sections 304, 302 read with Section 34 IPC, the petitioners have filed this revision petition mainly making a grievance for framing a charge under Section 304B against them.

The facts, in brief, are that Sudesh deceased daughter of Hawa Singh was married to petitioner No.1 on 16.2.1997. She is alleged to have committed suicide on 11.7.2004. This is statedly on account of harassment caused by the petitioners by demanding dowry. FIR under Sections 302, 304B IPC is registered against the petitioners. Detail of the allegations made in the FIR need not be noticed in view of limited nature of the prayer made to impugn the action of the trial Court in framing a charge under Section 304-B IPC.

As per the counsel, the date of marriage is 16.2.1997 and as such, the date of death which is 11.7.2004, would be beyond a period of 7 years and hence, offence under Section 304-B IPC can not be alleged against the petitioners.

The FIR in this case has been registered on the statement of Hawa Singh, father of the deceased. In the FIR, the complainant has mentioned that marriage took place on 16.2.1998. If this date is taken as a date of marriage, then the death will be within 7 years of the marriage. However, during the course of investigation, statements of various witnesses like Karan Singh son of Lakhi Ram are recorded under Section 161 Cr.P.C. They have mentioned that the marriage in this case took place on 16.2.1997. Reference is also made to the statement of Naresh son of Hawa Singh, who has also given the date of marriage to be 16.2.1997. He is none other than the son of the complainant. Reference is also made to the supplementary statement given by Hawa Singh, complainant, which is recorded on 26.7.2004, wherein he has stated that he was confused about the date of marriage at the time of lodging FIR. He is the complainant and has given the date of marriage to be 16.2.1997 in his supplementary statement. Copy of the supplementary statement is annexed with the petition as Annexure P-5. Mother of the deceased Ompati has also recorded 16.2.1997 to be the date of marriage. Pandit Sat Narain, who conducted this marriage, has also confirmed that the marriage took place on 16.2.1997. Statements of other prosecution witnesses like Raghbir, Maha Singh, Jai Singh and Dinesh Kumar, who are relatives of the deceased and had participated in the marriage have also recorded and have stated that

the marriage was performed on 16.2.1997. By making reference to all these statements recorded during investigation, learned counsel for the petitioner would say that prima-facie, it is seen that the date of marriage is 16.2.1997 and it is only on account of confusion that the complainant gave this date to be 16.2.1998, who has subsequently made amends to say that marriage was on 16.12.1997. The counsel accordingly contends that the evidence collected so far would not make out a prima-facie case of offence under Section 304B IPC as death concededly is beyond 7 years from the date of marriage. Prayer is made that it may, at the most, reveal an offence under Section 306 IPC. The petitioners have not otherwise made any grievance for a charge preferred against them under Section 302 IPC read with Section 34 IPC.

Learned State counsel, however, by referring to the complaint made by father of the deceased, on the basis of which FIR is registered, would say that trial Court is justified in framing a charge under Section 304B IPC by relying upon allegations made in the FIR.

I have considered the rival contentions raised before me by counsel for the parties.

No doubt, the Court is to prima-facie satisfy itself for framing a charge under any offence on the basis of material collected and placed before the Court, yet the Court, in my view, is required to take the entire material placed before it into consideration. Number of persons who are bound to know the date of marriage, being closely related to the deceased, have given statements about the date of marriage. Even the complainant is wavering and in his supplementary statement gave the date of marriage to be what is

stated by other witnesses. Son and wife of the complainant have also given the date of marriage to be 16.2.1997. Can such statement be ignored altogether to frame a charge on the basis of wavering statement made by the complainant? Perhaps, the things might have been a bit different if even the complainant had maintained his stand taken in the complaint and had not waived by giving supplementary statement. The consideration at the time of framing of charge is to see if prima-facie case is made out or not. It would not be open to be stretched to say that the positive material collected by the investigating agency can completely be ignored.

It would, thus, be in the fitness of things if the trial Court is asked to re-assess the evidence and re-determine if the material collected so far would prima-facie reveal offence under Section 304-B IPC. If the Court comes to this conclusion that the date of marriage, prima-facie, is 16.2.1997 and not 16.2.1998, it would accordingly decide if a charge under Section 304-B IPC can be framed against the petitioners or not. To this an extent, the order framing charge against the petitioners under Section 304-B IPC is set-aside, leaving discretion with the Court to re-assess and re-apply its mind to the case once over again.

The revision petition is accordingly disposed of

September 19,2007

Khurmi

**(RANJIT SINGH)
JUDGE**